IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.7593 OF 2002

Mr.A.A. Kumbhakoni for the Petitioner.

Mr.Patne, AGP for State.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 8TH JUNE,2005

P.C.:

1. By order dated 13-12-2002 notice of final disposal of the petition was issued. All the Respondents are served. Respondents Nos. 2 to 4 are appearing. Respondent No.1 is the Plaintiff. None appears for the Plaintiff.

2. By the order impugned in the petition, the Petitioner who was admittedly not a party to the civil suit and was elected as Up-Sarpanch of the village panchayat has been

restrained by an order of temporary injunction from functioning as such. What is shocking is that the learned Judge observed in his order that the Petitioner is not a party to the suit and still makes an order observing that there is likelihood of misuse of powers by the Petitioner.

3. The order is incapable of being sustained, firstly, because the settled law is that a person who is elected to elective office cannot by temporary order of injunction restrained from functioning in the office and in no circumstance a person who is not a party to the proceedings can be restrained from exercising the powers of the office to which he has been elected. Obviously, as the Petitioner was not a party to the civil suit, his election to the post of Up-Sarpanch was not under challenge.

4. Looking from any point of view the order impugned cannot be allowed to exist. The impugned order is set aside. Office is directed to

forward a copy of this order to the Registrar General of this Court. The Registrar General may look into the matter. Petition disposed of.

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